



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention  
pursuant to the optional reporting procedure**

**Combined sixth and seventh periodic reports of States parties**

**Luxembourg\* \*\* \*\*\***

[Date received: 14 January 2014]

\* The fifth periodic report of Luxembourg is contained in document CAT/C/LUX/5; it was considered by the Committee at its 759th and 762nd meetings, held on 3 and 4 May 2007 (CAT/C/SR.759 and 762). For its consideration, see the Committee's conclusions and recommendations (CAT/C/LUX/CO/5).

\*\* The present document is being issued without formal editing.

\*\*\* The annexes may be consulted, in their original language, in the archives of the secretariat.

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## **I. Introduction**

1. The Grand Duchy of Luxembourg submits to the Committee against Torture its combined sixth and seventh periodic reports under article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. In February 2010, Luxembourg accepted the new optional procedure in which the list of issues to be taken up prior to the submission of the periodic report takes the place of the report. This report comes within the framework of the new procedure and is a response to the list of issues appearing in document CAT/C/LUX/Q/6-7.
3. Several ministries were called on to contribute to the report. Consultations, on the basis of a preliminary draft of the report, were held with national human rights institutions and non-governmental organizations (NGOs) active in the area covered by the report in order to seek their perspective on the situation in Luxembourg.

## **II. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations**

### **Article 2**

1. **Please provide detailed information concerning the competence of the Ombudsman with respect to the Convention, the number of complaints of violations of the provisions of the Convention received, the measures taken and the effects thereof.**
  4. The Ombudsman is not directly linked to any Convention and thus not to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, either.
  5. Article 13 of the Convention establishes that each State party shall ensure that any individual who alleges he or she has been subjected to torture in any territory under its jurisdiction has the right to complain to the State's competent authorities.
  6. Under article 1, paragraph 2, of the Institutional Act of 22 August 2003 establishing the Ombudsman,<sup>1</sup> the mission of the Ombudsman is to receive, subject to the conditions of admissibility expressed in article 3 of the Act, complaints from natural or legal persons formulated in a matter concerning them and having to do with the performance of State and municipal administrative offices, as well as of public institutions run by the State or by a municipality, excluding their industrial, financial and commercial activities.
  7. Article 2, paragraph 1, of the Act establishes that any natural person or any legal person governed by private law who, in a matter concerning that person, considers that an authority referred to in article 1 has failed to act in keeping with its mission or is in breach of the conventions, laws and regulations in force may, by means of an individual written complaint or an oral statement made to the secretariat, request that the matter be brought before the Ombudsman.

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<sup>1</sup> <http://www.legilux.public.lu/leg/a/archives/2003/0128/a128.pdf>. A copy can be found in the annex (annex 1).

8. A combined reading of these two provisions shows clearly that the Office of the Ombudsman has the jurisdiction to examine breaches of conventions in general and that, within the limits of the Institutional Act, it can also be considered to be one of the authorities competent to receive complaints formulated under article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. No complaint falling within the scope of application of the Convention has yet been lodged with the Ombudsman.

10. Pursuant to the Act of 11 April 2010, which ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002 in New York, and both established the Office of the Ombudsman as the national preventive mechanism and determined its remit,<sup>2</sup> the Ombudsman was also designated as the national preventive mechanism for the purposes of the Optional Protocol.

11. As the Optional Protocol is directly related to the Convention, it should be noted that, in this context, the Ombudsman undertakes preventive missions involving oversight of respect for national and supranational human rights norms in all of the national establishments in which there are or may be persons deprived of their liberty at the instigation or by order of an administrative or judicial authority. It is important to note that the Optional Protocol does not provide for downstream, reactive actions. The intent is to introduce exclusively preventive, upstream oversight, any referrals on the part of third parties being ruled out.

12. In the exercise of its functions, the Office of the Ombudsman deals with minor breaches of the aforementioned norms, breaches that could not be said to be flagrant violations of the human rights still inherent to persons deprived of their liberty.

13. As the national preventive mechanism, the Ombudsman has carried out seven oversight missions to date. The detailed reports and recommendations can be consulted on [www.celpl.lu](http://www.celpl.lu).

14. It has also drafted two detailed opinions, which can be consulted on the same website, on the bills and regulatory proposals concerning the prison reform and on the Security Unit of the State Socio-educational Centre.

### Article 3

2. **With reference to the Committee's previous concluding observations, please provide information on the legislative measures taken to amend article 6, paragraph 12, of the Act of 5 May 2006 on asylum by including a provision stipulating that no person may be returned, expelled or extradited to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture (para. 6).**

15. It should be noted that article 6, paragraph 12, of the amended Act of 5 May 2006 uses the exact wording of European Union Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. In addition, the Luxembourg parliament introduced the following article into the Freedom of Movement and Immigration Act (amended) of 29 August 2008:

Article 129: A foreign national may not be expelled or deported to another country if he or she can establish that his or her life or freedom would thereby be seriously

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<sup>2</sup> <http://www.legilux.public.lu/leg/a/archives/2010/0056/a056.pdf>. A copy can be found in the annex (annex 2).

endangered, or that he or she would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**3. Please indicate the number of extradition requests received and give details of all cases of extradition, return or expulsion which have occurred since the previous report (CAT/C/81/Add.5).**

16. From 2007 to 2012, 14 extradition requests were received.

17. For returns and expulsions, see annex 3.

**4. Please describe the measures taken in response to the concern about the practice of organizing meetings between foreign nationals in administrative detention and their consular representatives, against their will, for identification purposes, even though they might have reason to fear reprisals for themselves or for their families back in their home countries, if it is known that they have applied for asylum in Luxembourg or simply left their country illegally.**

18. The consular authorities are not informed that a person being held in administrative detention has applied for asylum. In fact, when foreign nationals who are in Luxembourg illegally refuse to help prove their identity, a meeting with the consular authorities is often the only way of identifying them. Moreover, fear of reprisals in the country of origin may be an impediment to expulsion, to the point that the person concerned can benefit from a postponement of the expulsion or even a residence permit where there are humanitarian reasons of exceptional seriousness.

**5. Please provide statistical data, disaggregated by age, sex and ethnic origin, on the number of asylum applications registered, the number of successful applications, the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin, as well as the number of refoulements or expulsions.**

19. The Government of Luxembourg does not currently have statistics on the applications for asylum accepted because the applicants had been tortured or because they might be tortured if they were returned to their country of origin, or on the number of refoulements or expulsions.

20. Statistics on international protection for the years 2010–2012 can be found in the annex.<sup>3</sup> The number of asylum seekers by country of origin, by sex and by age can also be found there. The other tables provide information on applications accepted (for refugee status or subsidiary protection) and the number of forcible returns.

## Articles 5 and 7

**6. Please indicate whether the State party has, for any reason, rejected any request by a third State for extradition of an individual suspected of having committed an act of torture and, if so, whether it has launched its own prosecution. Please give details of the status and outcome of any such prosecution(s).**

21. No, Luxembourg has not rejected any such request.

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<sup>3</sup> Annex 4.

## Article 10

7. **Please provide information on the measures taken to ensure that adequate training is given to law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Please also indicate under what conditions staff members are allowed to attend in-service training. Please provide detailed information on the outcome of such measures.**
22. In the event of arrest or detention, those responsible for making the arrest are bound by article 39, paragraph 6:
- At the time of arrest, a detainee is informed in writing and against a receipt in a language that he or she understands, except in duly recorded cases when this is physically impossible, of the right to be examined without delay by a doctor. In addition, the State prosecutor may, at any time, on his or her own initiative or at the request of a member of the family of the detainee, designate a doctor to examine the detainee.
23. The staff of the holding centre, which has a total of 67 employees, was given initial on-site training of one month by certified instructors before the centre was even operational. All employees were given a highly intensive introduction to intercultural communication methods and techniques and suicide prevention. The employees involved benefited from thorough training in human rights and, more specifically, in respect for the human dignity of persons placed in administrative detention, and they clearly learned from courses on the legal and regulatory framework for administrative detention, asylum and immigration. The senior management of the centre has just put the finishing touches to a compulsory in-service training curriculum for all centre employees. The training emphasizes stress management on the job, prevention and management of disputes, suicide prevention and intercultural communication, as well as self-defence and basic first aid. In addition to these required courses, employees may take part in any training that would be of use to them in their official capacity, regardless of whether it is offered by public or private organizations.
24. As the centre has been operational only since September 2011, it seems too early to draw conclusions about the training. Nonetheless, incidents between officials and detainees are uncommon, so it is possible to assume that the communication courses are bearing fruit. Each time a person is admitted to the holding centre, any pre-existing injuries are documented by photograph and become part of an individual administrative record.
25. By means of basic and in-service training, the standing orders issued and meticulous supervision by the chain of command, the police constantly make sure that their officers display integrity and refrain from any abuse of power with respect to persons held in custody.
26. It should also be noted that, in the wake of the 29 April 2004 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Police Inspectorate, the body overseeing the police, has adopted a procedure for the supervision of police holding facilities and now carries out regular on-site inspections. With detachment, it points out the weaknesses it identifies and thus contributes to the continuous improvement of the relevant police rules and regulations.

**(a) Basic training**

27. Basic training involves a module on “The Police and Society”, made up of the following courses:

- Human rights (10 hours);
- The Constitution and civil liberties (18 hours);
- The rights and obligations of public officials (30 hours);
- Police ethics and combating extremism (12 hours).

*Human rights*

28. The course objective is to raise police cadets’ awareness of human rights. In the past, it was taught by a retired professor and past president of Amnesty International Luxembourg. It is now taught by the director of the police and society module.

29. The course involves four classes and a test and is in practice the prerequisite for the ethics of policing course in the second-year curriculum. It is organized as follows:

- Introduction: What are we talking about when we talk about human rights?
- Part one: The origin of human rights:
  - The particular emphases of such ancient texts as the Magna Carta (1215), the Petition of Right (1628) and the Declaration of the Rights of Man and of the Citizen (1789) are considered.
- Part two: United Nations:
  - Universal Declaration of Human Rights, the two Covenants of 1966, selected Conventions (specifically, torture, racial discrimination and genocide);
  - United Nations bodies.
- Part three: Council of Europe:
  - The European Convention on Human Rights, various protocols and conventions (torture and inhuman or degrading treatment, discrimination); certain rights and freedoms are considered in the light of the jurisprudence of the European Court of Human Rights (rulings generally involving law enforcement agencies);
  - The jurisdictional and institutional dimension (the European Court of Human Rights, the Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Commission against Racism and Intolerance, and so on); the roles of different actors and procedures.

30. As part of the course, in 2012, the police cadets visited the exhibit *Peuple européen, peuple étranger – Le Luxembourg et les Roms* (A European people, an alien people – Luxembourg and the Roma), which dealt with the situation of the Roma in Luxembourg.

*Police ethics and combating extremism*

31. This course considers the following topics:

- The use of force and of service weapons (Code of Conduct for Law Enforcement Officials, adopted by the United Nations in 1979);

- The police, corruption and favouritism (the Criminal Code, the Code of Conduct of the Council of Europe of 11 May 2000, the United Nations resolution of 28 January 1997);
- The police and racism (the Criminal Code, the European Code of Police Ethics, the recommendations of the European Commission against Racism and Intolerance);
- The fair trial (European Convention on Human Rights);
- Dealing with the public;
- Law enforcement agencies and extremism.

32. Basic training also involves courses on criminal procedure and others on interview techniques, the transport and treatment of persons deprived of liberty, and conflict management.

**(b) In-service training**

33. The objective of in-service training is to refresh and add to the police officer's professional knowledge and expertise. Every officer receives in-service training suited to his or her specific needs (legal training, administrative training, training for section heads and so on).

34. The police officers responsible for enforcing expulsion by air take a specific, four-hour course whose objective is to raise their awareness of the need to:

- Ensure respect for and the dignity and integrity of a person subjected to a body search;
- Ensure respect for the dignity of a person to be expelled for the duration of the expulsion;
- Ensure that the in-flight menu is compatible with the person's religious convictions.

35. The training has both theoretical and practical components.

36. Police officers take a specific 12-hour course on protecting young people and they attend a lecture by the Ombuds-Comité fir d'Rechter vum Kand (Ombuds Committee on the Rights of the Child) as part of the course on human rights. A 16-hour course on domestic violence is taught, and it includes a presentation by the Ministry of Equal Opportunity.

37. One part of the reform of the entire prison administration focuses on training guards (future prison officers).<sup>4</sup> The officials in charge of prison administration are aware that prison guards are involved not only in supervising individuals entrusted to the prison authorities but also in providing rehabilitation. The objective of the training is to offer those working in a custodial environment the professional training and refresher courses, both practical and theoretical, that they need to do their jobs.

38. The special internship training is the prerogative of the prison administration, and concludes with an examination organized by the administration at the end of the special training period. Since 2011, prison guards have been given 90 hours of special training during internships.<sup>5</sup> The programme is made up of four modules,<sup>6</sup> and the different courses are closely linked.

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<sup>4</sup> We are referring to special training (during internships), training with a view to promotion and in-service training.

<sup>5</sup> 2013 special training programme during internships (annex 5).

<sup>6</sup> Psychology, law, medicine and psychiatry, and the prison environment.



39. Training with a view to promotion<sup>7</sup> comes after the training offered during internships and involves 120 hours of classes. The courses taught as part of the special internship training and the training with a view to promotion constitute the basic professional training necessary for prison guards to do their jobs.

40. Officers are strongly encouraged to take in-service training courses.<sup>8</sup> Furthermore, promotion to some managerial positions is conditional on the completion of a number of specific courses.

**8. Does the training provided include developing the skills required to detect signs of torture and ill-treatment? Please indicate whether the Istanbul Protocol of 1999 has been incorporated into the training given to doctors. How many doctors have received such training?**

41. Luxembourg does not offer complete medical studies. As a result, Luxembourg nationals and the nationals of other member States of the European Union who set themselves up as doctors in Luxembourg have for the most part gone to medical school at universities in other countries of the European Union.

42. The Government is thus unable to say whether the respective academic curricula consider the provisions of the Istanbul Protocol, given that determining curriculum content is the prerogative of the country providing the training. For much the same reason, it is impossible to pronounce on the number of doctors who have indeed had specific training in that area.

43. Lastly, articles 12 and 13 of the Code of Ethics of the Medical and Dental Professions, adopted by the Medical Board, state that:

Article 12: Doctors who are asked or required to examine or treat a person deprived of liberty may not, directly or indirectly, even if only by being present, encourage or support an attack on the person's physical or mental integrity or dignity.

If they notice that the person has been subjected to abuse or ill-treatment, they must report it to the competent authorities.

Article 13: All doctors must maintain and improve their professional expertise by undertaking continuing professional development.

In exercising their functions, doctors shall keep abreast of guidelines on good practice.

44. Reading these two articles in conjunction makes it possible to infer that doctors working with individuals at risk of torture are under an obligation to maintain their professional competencies, including their knowledge of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the Istanbul Protocol of 1999.

45. If either the examining magistrate or the State prosecutor observes that there is evidence of possible ill-treatment, they immediately send the person to a forensic medical examiner or a general practitioner.

46. The training provided to future prison officers includes a psychology (developmental psychology) component and a medicine and psychiatry (mental illness and addiction) component. The classes on mental illness cover, among other things, the subject of trauma and post-traumatic stress (see list of issues, para. 7).

<sup>7</sup> 2013 programme for training with a view to promotion (annex 6).

<sup>8</sup> 2013 in-service training programme (annex 7).

## Article 11

9. **With reference to the Committee's concluding observations, please provide information on the measures taken to clarify the situation of asylum seekers for whom no deportation order has yet been issued, in order to ensure that, in the absence of behaviour that might compromise security or public order, they are not detained and are properly treated (para. 5). In particular, please indicate the measures taken by the State party to ensure that such asylum seekers are brought before a judge so that he or she may rule on the legality of their detention and that they are informed of their rights in a language they understand. Please also state what measures have been taken to ensure that they have a right to effective remedies.**

47. The holding centre was set up pursuant to the Act of 28 May 2009. In this facility, persons subject to a detention order benefit, as necessary and in keeping with the circumstances, from individual psychosocial care provided by centre personnel trained for that purpose.

48. The fundamental principle of the country's immigration policy is the free movement of persons. Only in exceptional cases, and for a period of no more than three months, may a person seeking international protection be placed in a closed facility (the holding centre).

49. Article 10 of the Act (amended) of 5 May 2006 on the Right to Asylum and Complementary Forms of Protection lists the cases below:

1. The applicant may, by decision of the Minister [within whose remit asylum falls], be placed in a closed facility for a maximum period of three months in the following cases:

(a) If the application for international protection was submitted in order to prevent the expulsion of a person who is in Luxembourg illegally;

(b) If the applicant refuses to cooperate with the authorities in establishing his or her identity or travel itinerary;

(c) If the application for international protection is processed as part of an expedited procedure pursuant to article 20, paragraph 1 (d), (e), (f), (i), (k), (l) or (m), of the present Act;

(d) If detention proves necessary to avoid compromising the transfer of the applicant to the country that, under international treaties Luxembourg is party to, is considered responsible for examining the application.

2. The decision referred to in paragraph 1 may be renewed by the Minister for periods of three months at a time, assuming that article 20, paragraph 1 (f), obtains, with the total period of detention not to exceed 12 months.

3. When the application for international protection is submitted during a period of detention under legislation governing the entry and residence of foreigners, the period of detention under the present Act begins on the day the application for international protection is submitted.

50. As to the defence of the applicant's interests and the information provided to him or her, articles 120 to 123 of the Freedom of Movement and Immigration Act (amended) of 29 August 2008 should be cited:

Article 120:

1. In order to prepare for the enforcement of an expulsion order under articles 111 and 116 to 118 or of a request for transfer by air under article 127, or when custody in a holding area exceeds the 48 hours provided for under article 119, the

foreign national may be detained in a closed facility by decision of the Minister [whose remit includes immigration], unless he or she is made subject to a restricted residence order pursuant to paragraph 1 of article 125. A decision is made to detain a foreign national particularly if there is a flight risk or if the person concerned prevents or impedes preparation for the return or the expulsion procedure. Unaccompanied minors may be placed in detention in an appropriate place suited to the needs of their age. Consideration shall be given to the best interests of the child.

2. When the Minister is not in a position to issue a written decision ordering detention, the foreigner may be held by oral decision of the Minister, subject to confirmation of the decision in writing within no more than 48 hours.

3. The period of detention is set at one month. Detention may be maintained for only as long as the expulsion procedure is under way and is being carried out with all due diligence. The period of detention may be extended three times by the Minister, each time for a period of one month, if the conditions listed in paragraph 1 above are met and if it is necessary to ensure that the expulsion can be completed. If, despite the efforts made, it is likely that the expulsion procedure will take longer as a result of a lack of cooperation from the foreign national or delays in receiving the required documents from a third country, the period of detention may be extended twice, for one additional month at a time.

[...]

Article 122:

1. To defend their interests, persons detained shall have the right to the assistance, free of charge, of an interpreter.

2. Persons detained are informed immediately, in writing and against a receipt, in a language it is reasonable to assume that they understand, except in duly recorded cases of material impossibility, of their right to notify their family or a person of their choice. A telephone is provided free of charge for that purpose.

3. Persons detained are informed immediately, in writing and against a receipt, in a language it is reasonable to assume that they understand, except in duly recorded cases of material impossibility, of their right to be examined by a doctor within 24 hours of their placement in detention and to select a lawyer to represent them in court from one of the bar associations established in the Grand Duchy of Luxembourg or to have a lawyer assigned to them by the president of the Luxembourg Bar Council. Minors unaccompanied by legal representatives are assigned ad hoc administrators as soon as possible.

[...] [repealed by the Act of 28 May 2009]

Article 123:

1. The decisions referred to in article 120 may be appealed before the Administrative Tribunal, which rules in its capacity as a trial court.

2. The appeal must be entered within one month of the service of the decision.

3. The Administrative Tribunal rules promptly, and in any case within 10 days of the entry of the appeal.

4. The decision of the Administrative Tribunal may be appealed before the Administrative Court. On pain of being time-barred, the appeal must be entered within three days of notification of the decision of the Administrative Tribunal.

5. The Administrative Court rules promptly, and in any case within 10 days of the entry of the appeal. During the waiting period and the appeal proceedings, enforcement of any judgement that has set aside or varied the decision under appeal shall be suspended.

- 10. Please provide information on the measures taken to ensure that aliens at the disposal of the authorities are placed in a facility that is separate from a penal correction facility. In this respect, please give updated details on the progress of the project to build a centre for aliens in administrative detention on a site separate from the prison.**

51. The holding centre established by the Act of 28 May 2009 is a closed facility whose mission is to accommodate and house persons subject to detention measures under article 20 of the Freedom of Movement and Immigration Act of 29 August 2008 or under article 10 of the Act (amended) of 5 May 2006 on the Right to Asylum and Complementary Forms of Protection and, if necessary, to prepare them for expulsion to their country of origin or the country from which they arrived, while offering them, as necessary and depending on the circumstances, individual psychosocial guidance provided by centre personnel trained especially for that purpose. The holding centre has been operational since September 2011.

- 11. Please indicate the measures taken to ensure that solitary confinement is expressly and strictly regulated by law and to strengthen judicial supervision. Please provide information on what steps will be taken to put an end to this disciplinary practice and change the relevant regulations accordingly, as the Committee recommended in its concluding observations (para. 9).**

52. As part of the reform of the prison system, there are plans to abolish solitary confinement.

53. The two relevant bills — Nos. 6381 and 6382 — that provide for the general reform of prison administration and the system of sentence enforcement can be found in the annex.<sup>9</sup>

54. The Government has sought not only to transpose into law international recommendations on eliminating solitary confinement but also to reform and modernize the administration and management of correctional facilities.

55. The prison authorities take the liberty of reiterating in part the reply they gave to the Committee against Torture of the United Nations in 2007: “Moreover, solitary confinement is ordered as a disciplinary measure only for such serious breaches of discipline as aggravated assault, mistreatment of a fellow inmate, hostage-taking, attempted escape and arson. This form of violence is rare, but its seriousness requires an appropriate disciplinary response.” Solitary confinement was not ordered for disciplinary reasons in either 2012 or 2013.

## **Articles 12 and 13**

- 12. Please provide detailed statistical data, disaggregated by offence, age, ethnic origin and sex, on complaints of acts of torture and other cruel, inhuman or degrading treatment or punishment allegedly committed by law enforcement officials, as well as on any related investigations, prosecutions and criminal and disciplinary sanctions, where relevant.**

56. There were no complaints against prison officials.

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<sup>9</sup> Annexes 8 and 9.

**Disciplinary investigations initiated by the police**

<i>Year</i>	<i>Number of investigations</i>	<i>Number of sanctions</i>
2009	2	1
2010	4	0
2011	2	1
2012	5	0

57. The Data Protection Act expressly prohibits recording data concerning ethnic origin.<sup>10</sup>

- 13. In its concluding observations, the Committee expressed its concern about the system which gives the public prosecutor discretion to decide not to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even order an investigation (para. 11). Please provide details on the steps taken by the State party to follow up on the Committee's recommendations.**

58. Under article 4, paragraph 1, of the Code of Criminal Procedure, all victims must be notified automatically of a discontinuance of proceedings and, upon request, of the opening of an investigation as well as any declaratory judgement in the trial courts.

59. In addition, the State prosecutor or the examining magistrate must automatically provide the victim with detailed information regarding the closure of any case involving ill-treatment or acts of torture.

60. It should also be noted that the information given to the victim must describe the conditions for initiating a private prosecution or suing for damages in criminal proceedings. The opinion must also state that the victim may apply to the Attorney General, who has the right to enjoin the State prosecutor to initiate a prosecution. In this case, it is a sort of appeal against the State prosecutor's initial decision.

61. Furthermore, within each Office of the Public Prosecutor and the Attorney General's Office, only the Attorney General and the respective deputy prosecutors deal with such cases. Consequently, they are dealt with by prosecuting attorneys who have a certain amount of experience and are not heavily involved in routine affairs.

62. It is thus clear that, in the Grand Duchy of Luxembourg, it is scarcely possible to speak any longer of the discretion to drop prosecutions without any oversight or possible appeal against a decision to discontinue proceedings.

- 14. In light of the Committee's concluding observations, please:**

**(a) Provide information on the steps taken to order an investigation when there are grounds for believing that a person may have been subjected to torture or cruel, inhuman or degrading treatment, in particular during deportation operations (para. 7).**

63. Investigations are launched in every case of possible torture or inhuman or degrading treatment, without exception. If the acts were committed by law enforcement officials, the investigations are carried out by the Police Inspectorate.

<sup>10</sup> Act (amended) of 17 July 2002 on the Protection of Persons with Respect to Personal Data Processing, art. 6, para. 1: "Processing of data that identify racial or ethnic origin, political opinions, religious or philosophical convictions, or trade union membership, or of data on health and sexuality, including genetic data, is prohibited."

64. This is also the case if they were committed during an expulsion.

**(b) In this connection, please provide information on the status of the draft regulations setting up an official code of conduct for officials responsible for enforcing removal orders. In addition, please indicate whether the State party has taken steps to authorize the presence of human rights observers or independent physicians during all forced removals, and systematically to allow a medical examination to be conducted prior to this form of removal and whenever an attempted removal has been unsuccessful. Please provide information on the steps taken in response to the concern that there is no absolute prohibition of certain practices which might constitute torture and inhuman and degrading treatment. Please provide details of the investigation into the unsuccessful operation to deport Mr. Mamadou Aliou Diallo.**

65. According to article 124 of the Freedom of Movement and Immigration Act (amended) of 29 August 2008, the coercive measures taken to effect the expulsion from the country of a foreign national who resists must be appropriate and the use of force must not exceed what is reasonable. The measures are enforced in accordance with fundamental rights and with due regard for the dignity of the person concerned. As the expulsion proceeds, due consideration is given to the best interests of the child, and the family life and the health of the third-country national. The Grand-Ducal Regulation establishing the rules of conduct for officials responsible for enforcing expulsion orders was adopted on 26 September 2008. According to this Regulation, expulsions shall be effected with due regard for the dignity and security of the person being expelled and due consideration for the special needs of vulnerable persons, particularly children, persons with disabilities and the elderly. An expulsion may not take place if the person to be expelled is medically unfit to travel. The Minister may decide to include a Ministry representative, as well as medical and paramedical assistance, in the escort. If the expulsion is effected by charter flight, the escort systematically includes a Ministry representative as well as medical and paramedical assistance. In practice, a “fit-for-flight” medical check-up is carried out before an expulsion. If an attempted expulsion is unsuccessful, the person concerned is taken back to the holding centre, where he or she has access to medical treatment at all times.

66. The way the forcible expulsion proceeds, including any significant incident and the use of restraints, must also be duly noted in a report drawn up by the head of the (police) escort.

67. The independent observer who witnesses the operation verifies whether the expulsion is carried out with proper regard for the dignity of the persons expelled and in accordance with their fundamental rights. The observer may also draw up a report for the Minister. Together with the Luxembourg Red Cross, the Minister has concluded a framework agreement for the mission of observer provided for by article 6 of the Grand-Ducal Regulation of 26 September 2008 establishing the rules of conduct for officials responsible for enforcing expulsion orders. Furthermore, for each expulsion order, the Minister signs a pact with each observer on the observer’s mission, in accordance with article 6 of the Regulation. In addition to the Red Cross representative who witnesses the expulsion itself as an independent observer, representatives of non-governmental organizations (NGOs) active in the areas of immigration and asylum also have access to the holding centre and visit detainees before their forcible expulsion, and the Ombudsman is responsible for oversight of the country’s closed detention centres, as mandated by parliament. After an inspection, the Ombudsman may draw up a report with his or her observations regarding possible abuses.

68. The expulsion of Mr. Mamadou Aliou Diallo on a commercial flight failed because of his aggressive behaviour. He bit a French police officer on the ankle. Afterwards, the Repatriation Department had to resort to expulsion by chartered airliner.

(c) Please provide information on the impact and effectiveness of the steps taken to prevent cases of torture or cruel, inhuman and degrading treatment, in particular in respect of deportation operations.

69. Since the introduction of special oversight of deportation operations, complaints involving cases of cruel, inhuman or degrading treatment have become increasingly uncommon. No major incident has been reported either by an independent observer or by the Ombudsman.

## Article 16

15. Please describe the steps taken in response to the concern about overcrowding at the Luxembourg Prison Centre (CPL) and the problems exacerbated by such overcrowding, including promiscuity and high rates of violence. Please provide up-to-date statistics on this prison's capacity and population.

70. As another part of the prison system reform, a third prison, meant primarily to accommodate those awaiting trial,<sup>11</sup> is being planned. It should be noted that the number of detainees rose in 2012, but it is still fewer than 700.<sup>12</sup>

16. In its concluding observations, the Committee stated that it was concerned about reports that foreign detainees are subjected to arbitrary behaviour and racist or xenophobic insults on the part of law enforcement and prison personnel (para. 8). In that respect:

(a) Please provide details of the steps taken by the State party in response to the Committee's recommendation. Do the steps taken include providing law enforcement and prison personnel with more training in respect for the physical and psychological integrity of detainees? Do they make such racist or xenophobic behaviour a criminal offence, order systematic investigations and, in all confirmed cases, bring the accused before the competent courts? In addition, please provide information on the steps taken to recruit suitable staff to ensure greater cultural and linguistic diversity.

71. The steps taken to provide law enforcement personnel with more training in connection with respect for the physical and psychological integrity of detainees are referred to in the reply to paragraph 7 of the list of issues.

72. Arbitrary behaviour and racist and xenophobic insults are defined as offences in Title VIII (crimes and misdemeanours against persons) of Book III (offences and their punishment) of the Criminal Code:<sup>13</sup>

- Chapter V – Attacks on a person's honour or on the reputation of others (art. 448);
- Chapter VI – Racism, revisionism and other forms of discrimination (arts. 454–457-4).

73. As a general rule, these articles may also be invoked in the event of racist or xenophobic behaviour towards an inmate on the part of a prison official.

74. With regard to criminalization and ordering systematic investigations, the provisions of Grand-Ducal Regulation (amended) of 24 March 1989 on the administration and internal

<sup>11</sup> This new prison will have a capacity of 400 inmates.

<sup>12</sup> From the 2012 annual report of the prison administration (annex 10).

<sup>13</sup> The Criminal Code is available online at [http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_penal/](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/).

regulations of prisons<sup>14</sup> state that “inmates may submit requests or complaints to the warden of the facility”. If the warden’s decision is prejudicial to the inmate, the inmate may file a petition with the Attorney General. When the matter complained of is a criminal offence, the Attorney General is obliged to pass the file on to the State prosecutor so that legal proceedings can be initiated.

75. The prison administration is also planning courses that will look at foreign cultures and immigration for the 2013 internship training and promotion training programmes.

76. Lastly, regarding efforts to ensure greater cultural and linguistic diversity when recruiting staff, Luxembourg law states that “Luxembourg nationality is required for posts that involve participation, direct or indirect, in the exercise of public authority or for posts concerned with safeguarding the general interests of the State”.<sup>15</sup> Posts in the administrative department and the prison guard service of the prison administration are defined as posts involving direct or indirect participation in the exercise of public authority.

**(b) Please provide detailed information on the impact and effect of these measures in reducing the number of cases of arbitrary behaviour and racist or xenophobic insults on the part of law enforcement and prison personnel.**

77. The prison administration and the national police force are not currently in a position to provide the information requested.

- 17. In its concluding observations, the Committee strongly reiterated its previous recommendation that minors should not be placed in adult prisons for disciplinary purposes (para. 10). Please provide detailed information on the steps taken by the State party to comply with that recommendation. In that respect, please provide information on the progress of the project to build the Dreibern closed security unit for minors and on the interim measures taken to ensure that minors are kept strictly separate from adult detainees. Please indicate whether the security unit project will also concern the female juvenile population. In addition, please describe the steps taken to separate minors in conflict with the law from those with social or behavioural problems, to ensure that minors are not tried as adults and to set up an independent monitoring body to inspect juvenile facilities regularly.**

78. The closed unit for minors will open in 2014.

79. The security unit, one of the seven units making up the State Socio-educational Centre, is a closed facility, the construction of which is in its final phase.

80. As a closed unit, and in accordance with article 3 of the Act of 16 June 2004 on the Reorganization of the State Socio-educational Centre, the security unit confines its residents to a restricted area.

81. As a unit of the Centre, it is under the obligation to take in the residents who are placed there by order of the legal authorities, in accordance with the provisions on the Youth Protection Act or with any other legal provision.

<sup>14</sup> <http://www.legilux.public.lu/leg/a/archives/1989/0017/1989A01951.html>.

<sup>15</sup> Article 1, paragraph 2, of the Grand-Ducal Regulation of 12 May 2010 determining the posts in State administrations and public establishments involving direct or indirect participation in the exercise of public authority and functions aimed at safeguarding the general interests of the State or other public-law corporations (<http://www.legilux.public.lu/leg/a/archives/2010/0078/2010A1444A.html>), in implementation of article 2 of the Act of 18 December 2009 amending and supplementing the Act (amended) of 16 April establishing the general regulations on civil servants (<http://www.legilux.public.lu/leg/a/archives/2009/0248/2009A4394A.html>).



82. The Dreiborn Security Unit has four living units with three individual bedrooms each and can accommodate three residents per living unit. The number of residents in the security unit is thus limited to 12.

83. Residents of the opposite sex are separated, except insofar as shared activities and socio-educational teaching are concerned.

84. Before it can open, the Government will have to adjust the legal and regulatory framework.

85. On 14 June 2013 the Government Council passed:

- A bill amending:
  - The Act of 16 June 2004 on the Reorganization of the State Socio-educational Centre;
  - The Civil Service Salaries Act (amended) of 22 June 1963;
  - The Act (amended) of 29 June 2005 on the Staffing of Secondary and Technical Secondary Educational Institutions;
  - The Military Organization Act (amended) of 23 July 1952 (bill No. 6593).
- The draft Grand-Ducal Regulation on organization of the State Socio-educational Centre Security Unit;
- The draft Grand-Ducal Regulation determining entry, appointment and promotion criteria for the various posts in the State Socio-educational Centre.

86. Bill No. 6593 was put before the Chamber of Deputies on 18 July 2013. The objective of the bill and the two draft Grand-Ducal Regulations is to establish rules for the organization of the State Socio-educational Centre in the more specific context of the setting-up of the Dreiborn Security Unit. The bill thus amends the State Socio-educational Centre Reorganization Act of 16 June 2004. The terms are meant to ensure that the Dreiborn Security Unit, which is in the final phase of construction, functions properly.

87. As soon as the legislative and regulatory procedure is completed, the security unit of the Dreiborn Socio-educational Centre will be ready for use.

88. Article 10 of bill No. 6382 on prison administration reform, as currently constituted, recommends that minors should henceforth be admitted to prison only if: (i) they have reached the age of 16; (ii) they have committed a criminal offence; and (iii) the juvenile judge has decided, pursuant to the Youth Protection Act (amended) of 10 August 1992, that the offence is so serious that the minor is to be judged in accordance with the usual powers and procedures applicable to adults. Therefore, if this provision were adopted in its present form, it would no longer be possible to send a minor to prison for disciplinary reasons.

**18. Further to the concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/LUX/CO/5, paras. 19–20):**

**(a) Please provide up-to-date information on the measures taken by the State party to prevent and address all forms of violence against women. On this subject, please provide detailed information on the content and implementation of the second national plan on equality for the period 2009–2013, on its impact on the number of cases of violence against women, and on the progress of the bill prohibiting all physical and sexual violence within the family, including genital mutilation.**

*The 2009–2014 national plan on gender equality*

89. In 2009, political changes were focused as a matter of urgency on the equality of women and men and the fight against gender discrimination. Gender equality requires not only de jure but also de facto equality, which remains to be achieved more fully with the help of awareness-raising, communication, training and supervisory measures and initiatives with those involved on the ground. The development and success of the plan depend on the complementary, coordinated involvement of both men and women.

90. The evaluation of the first national plan on gender equality, for the period 2006–2008, together with the coalition agreement for the 2009–2014 legislative period, has made it possible to extend the plan on the basis of the same principles and framework for the new legislative period, from 2009 to 2014, taking into account the conclusions of the evaluation as well as the political and legislative commitments and priorities of the Government's 2009–2014 programme. The Government has, among other things, confirmed that the Ministry of Equal Opportunity's coordinating mission as the national institutional mechanism will continue, as will the involvement of all the other relevant actors – that is, the other ministerial departments responsible for policy initiatives under the leadership of their respective gender competency groups and represented on the Interministerial Committee on Equal Opportunity for Women and Men. The policy of gender mainstreaming and specific initiatives remains in place.

91. The 2009–2014 plan will be scientifically monitored and evaluated in 2013–2014 ([www.mega.public.lu/publications](http://www.mega.public.lu/publications)).

92. The plan's policy area addressing violence against women and men, which covers only certain forms of violence against all persons, regardless of sex, is reflected either directly or indirectly under several of the 2009–2014 action plan's 12 priority themes.

93. To begin with, gender-based violence, including domestic violence, is a serious phenomenon in its many forms and throughout the world it affects mostly women and children; nonetheless, men are also affected. Violence taken as a whole, in all types, forms and associated areas, affects men as much as women and children. While women victims must be helped, supported and empowered, the process should also address the male offenders, and vice versa when women are the perpetrators and men the victims.

94. The policy of fundamental rights must be built in a comprehensive and consistent fashion around the equal rights of women and men, which make it possible to work together for real equality, not least as it is expressed in connection with violence.

**1. “Violence, prostitution and human trafficking” policy area**

95. As part of the coalition agreement for the legislative period, the Government has established the following priorities:

- (a) A review of domestic violence legislation;
- (b) Implementation of a system for monitoring legislation on human trafficking;
- (c) Scientific monitoring of the development of prostitution at national and local levels – analysis of alternatives to the so-called Swedish approach to prostitution.

*(a) Review of domestic violence legislation*

96. In the wake of the recommendations made each year to the Government Council by the Committee on Cooperation between Professionals Combating Violence and of two scientific assessments of the Domestic Violence Act of 8 September 2003 carried out by an

independent expert in 2006 and 2009, the Government has made modifications to the Act, amending:<sup>16</sup>

- The Police and Police Inspectorate Act of 31 May 1999;
- The Criminal Code;
- The Code of Criminal Procedure;
- The New Code of Civil Procedure.

97. The Act of 30 July 2013<sup>17</sup> amended:

- The Domestic Violence Act of 8 September 2003;
- The Police and Police Inspectorate Act of 31 May 1999;
- The Criminal Code;
- The New Code of Civil Procedure.

98. The objective of the guidelines underpinning the reform is to introduce and recast measures to prevent and remedy domestic violence.

99. The Act of 30 July 2013<sup>18</sup> strengthens and ensures:

(1) The protection and the rights of victims, both adults and minors, in particular by:

- Extending eviction orders from 10 to 14 days;
- Adding to the eviction order, which entails a prohibition on the person evicted returning to the family home, two other prohibitions – a prohibition on that person making contact orally or in writing, directly or through an intermediary, with the person under protection and a prohibition on him or her approaching the protected person for the duration of the eviction order. The police are entitled to make sure that these prohibitions are respected;
- Recognizing children who have witnessed domestic violence as indirect victims and making it possible for them to be looked after, assisted, guided and given advice by the support service for victims of domestic violence, which is given a legal basis for that work;
- Extending the eviction order and other legal protection measures to cover all persons cohabiting or having cohabited in a family setting with the person concerned. The notion of an intimate partner is done away with;
- Amending article 1017-1 of the New Code of Civil Procedure in such a way as to make it possible for a person who is protected by an eviction order and has submitted a petition to the district court judge for an extension of the order for a period of at most three months (the submission must be made at the latest by the fourteenth day following the entry into force of the order) to seek at the same time an extension of the prohibitions associated with the initial order – that is, a prohibition on the alleged perpetrator making contact with or approaching the victim;

<sup>16</sup> <http://www.legilux.public.lu/leg/a/archives/2003/0148/a148.pdf>.

<sup>17</sup> <http://www.legilux.public.lu/leg/a/archives/2013/0150/a150.pdf>.

<sup>18</sup> A historical overview and detailed outline of the Act can be found at [http://www.violence.lu/violence\\_Show\\_Loi-du-30-juillet-modifiant-la-loi-sur-la-violence-domestique-du-8-septembre-2003.21-15-2.html](http://www.violence.lu/violence_Show_Loi-du-30-juillet-modifiant-la-loi-sur-la-violence-domestique-du-8-septembre-2003.21-15-2.html).

- Adding a prohibition on approaching the accommodation service and its appurtenances, childcare facilities and schools to the prohibitions provided for by article 1017-8 of the New Code of Civil Procedure;
  - Enhancing penalties under article 439 of the Criminal Code as follows:
    - Unlawful entry or attempted entry into a person's home and appurtenances by the perpetrator concerned by an eviction order is subject to penalties of two orders: lighter penalties for simple unlawful entry and heavier penalties for unlawful entry by climbing, violence, break-in, or with the use of skeleton keys or other devices for opening doors;
    - Any deliberate violation of the prohibition on approaching that follows from an eviction order or violation of the prohibitions and orders provided for under article 1017-8 is also an offence under the Criminal Code, on condition that the victim lodges a complaint;
  - Allowing minors to be heard in the context of article 388-1 of the Civil Code in connection with petitions to extend an eviction order provided for under article 1017-1 of the New Code of Civil Procedure, requests to vacate and to return to the home in the absence of such an eviction order and requests to benefit from the prohibitions and orders provided for in article 1017-8 of the New Code.
- (2) The accountability of perpetrators of domestic violence and their right of defence, in particular by the fact that:
- The person evicted must report to an organization that works with perpetrators of violence within seven days of the eviction order entering into force. If this requirement is not complied with, the organization contacts the person and calls him or her in for an interview. The organization briefs the Office of the Public Prosecutor;
  - The organization that works with perpetrators of domestic violence, defined as a private or public law body whose aim is to provide psychological support for the prevention of violence and proactive intervention contact facilities for all perpetrators of domestic violence, as it is characterized in the new Act, gains legal standing equivalent to that of the organization offering support to the victims of domestic violence. It becomes a full member of the Committee on Cooperation between Professionals Combating Violence;
  - On the day of the entry into force of the eviction order, the police report that fact to an organization that works with perpetrators of domestic violence as well as to an organization offering support to the victims of domestic violence;
  - The person evicted has the right to appeal the order and is informed of that right by the police. Any appeal is without suspensive effect; the eviction continues to be effective even if an appeal has been lodged. The person evicted must proceed in accordance with the procedure provided for in articles 1017-1 and 1017-2 of the New Code of Civil Procedure – that is, by applying to the president of the district court no later than the fourteenth day after the entry into force of the eviction order and by observing the same formalities as must be observed by the protected person seeking an extension of the order. Pending the president's ruling, the evicted person's application does not extend the eviction order beyond the fourteenth day;
  - An organization that works with perpetrators of violence may assist but not represent alleged perpetrators in the context of a petition by the protected person for an extension, an appeal against an eviction order by the person evicted under articles 1017-1 and 1017-2 of the New Code of Civil Procedure, a request to leave the home

made by an alleged victim in the absence of an eviction order under article 1017-7 of the New Code or an application by an alleged victim for the imposition of the prohibitions and orders provided for by article 1017-8 of the New Code.

100. A government amendment to bill No. 5351<sup>19</sup> amending the Youth Protection Act (amended) of 10 August 1992, put forward on 12 March 2010, introduced an article, 25 bis, that states that, in an emergency, the juvenile judge may prohibit persons who compromise the physical or mental health, education or social development of minors from making contact with a child. When the matter cannot be referred to the juvenile judge, such decisions are taken by the State prosecutor.

101. Without prejudice to the Domestic Violence Act of 8 September 2003, the juvenile judge or, failing such, the State prosecutor may decide on the method to be used to evict persons who are living in the same home as children under the age of 18 and are subject to a restraining order barring contact with them.

(b) *Implementation of a system for monitoring legislation on human trafficking*

102. This system has its legal basis in the Act of 8 May 2009 on Supporting, Protecting and Ensuring the Safety of Victims of Human Trafficking and amending the New Code of Civil Procedure, article 10 of which provides for a framework to provide protection and support to trafficking victims, referred to as the Committee on Monitoring the Fight against Human Trafficking, which is responsible for monitoring and coordinating the prevention and assessment of the phenomenon of trafficking in human beings, analysing and centralizing the statistical data transmitted to it and overseeing and evaluating implementation of legislation dealing with human trafficking.

103. The Committee will be able to submit to the Government proposals it considers useful. It will be made up of representatives of public bodies empowered to implement the Support for Victims of Trafficking Act, as well as representatives of registered support services and associations. A Grand-Ducal Regulation specifies its composition and organization, its methods of work and the allowance to be paid to each of its members.

104. The work mentioned above is currently done by the informal Ad Hoc Committee on Trafficking, a State body established in 2009 in the form of an interministerial working group bringing together representatives of the police, the Ministry of the Interior, the Ministry of Justice, the Ministry of Equal Opportunity, the public prosecutor's office, the Ministry of Foreign Affairs and Immigration and the Ministry of Family Affairs and Social Integration. It meets four times a year, or more often if its members so request.

105. The draft Grand-Ducal Regulation on the composition, organization and working methods of the Committee on Monitoring the Fight against Human Trafficking was adopted by the Government Council on 18 October 2013. It was sent on for consideration to the Council of State and to the Advisory Commission on Human Rights.

106. Also sent on for consideration was the draft Grand-Ducal Regulation: (1) amending the Grand-Ducal Regulation of 19 March 1999 concerning the government approval to be granted to providers of services to girls, women and women with children; and (2) implementing article 2, paragraphs 1 (a), 2 and 4, and article 10 of the Act of 8 May 2009 on Supporting, Protecting and Ensuring the Safety of Victims of Human Trafficking and amending the New Code of Civil Procedure.

107. The formulation of the two draft regulations was monitored as part of the work of the informal Ad Hoc Committee.

<sup>19</sup> Available on the Chamber of Deputies website : [www.chd.lu](http://www.chd.lu).

108. The Inspectorate of Labour and Mines is a supervisory agency reporting to the Ministry of Labour and Employment. It oversees the proper implementation of labour legislation by employers and its evaluation.

(c) *Scientific monitoring of the development of prostitution at national and local levels – analysis of alternatives to the so-called Swedish approach to prostitution.*

109. The Ministry of Equal Opportunity is responsible for the regulation of prostitution. To this end, it has entered into an agreement with the Luxembourg Red Cross's Drop In service, a clinic for prostitutes.

110. The articles of chapter VI of the Criminal Code — “On the exploitation of prostitution and on procuring” — were supplemented pursuant to the Act of 13 March 2009.

111. In 2007, to gain a picture of the phenomenon of prostitution nationwide, the Government commissioned a study that provided an initial impression of the scale of prostitution in Luxembourg. The study was repeated in 2012 in order to observe changes in society's views of prostitution.

112. Before any analysis of alternatives to the so-called Swedish approach to prostitution, and in view of the country's small size, Luxembourg had to consider prostitution in the context of the Greater Region. For this reason, the Government sought close cooperation with the neighbouring countries, which it visited to gain greater familiarity with their legislative and regulatory frameworks for prostitution and procuring and with their practices in supporting and aiding prostitutes (health, security, life chances). In addition to these consultations abroad, the Ministry also set up a “prostitution” hub bringing together the parties directly involved in providing support for prostitutes in Luxembourg: the DropIn Clinic, the Ministry of Equal Opportunity, the Social Action Service of the City of Luxembourg, the Attorney General's Office and the national police. The objective of the hub is to work out a comprehensive approach to improving the support available to prostitutes, taking account of safety, health and psychosocial issues. The points to be discussed can be summarized as follows:

- Improving the support offered to sex workers in terms of health and safety conditions;
- Formulating a concept for an exit strategy for sex workers seeking to leave prostitution;
- Building up “street work” in collaboration with the City of Luxembourg;
- Taking concerted action to achieve a better understanding of the phenomena of procuring and trafficking in human beings and make it possible to guide victims to appropriate facilities;
- Reducing violence against prostitutes;
- Protecting minors.

113. The hub began its work in October 2013 with the objective of submitting its observations to the Government Council. The observations are awaiting submission to the new Government currently being formed.

## 2. “Economy” policy area

114. Affirmative action, as defined under articles L.243-1 to L.243-5 of the Labour Code, includes the following three priority areas as assessed by means of a satisfaction survey of all staff of a given company:

- Equal treatment of women and men;

- Equal decision-making power for women and men;
- The equal right of women and men to achieve a life-work balance.

115. The issues of sexual and psychological harassment in the workplace are also covered. The survey makes it possible to identify where action needs to be taken and, after rigorous analysis of the data and information compiled, to work out how to improve equality between the sexes in the workplace.

116. Private sector companies have been operating affirmative action policies since 1999, in line with the Act of 12 February 1999 on implementation of the 1998 national employment action plan. That plan aims, among other things, to help private companies to take specific steps to promote equality between women and men in their businesses, bring about genuine equality at work, safeguard the well-being of employees in the workplace and increase their motivation, reduce staff turnover and deal more effectively with and prevent harassment through awareness-raising and training.

117. Such initiatives have been extended to the public sector.

### 3. “Education, training and research” policy area

118. Aside from sex education in schools, the plan provides, under policy area 3, for political initiatives on health in the form of a review of abortion laws and through access to condoms and other forms of contraception as part of efforts to combat the spread of sexually transmitted diseases and prevent unwanted pregnancies. Under section 12, on discrimination against girls, provision is made for stepping up preventive measures, in particular through the introduction of sex and human rights education programmes at as early an age as possible.

119. Under the 2009–2014 government plan, a programme of sex and relationships education will be rolled out systematically at all levels in the education system.

120. The Ministry of Health has decided to implement a multi-year comprehensive and interdisciplinary national programme to promote and protect the right of all to sexual and reproductive health. The programme, which was put together by the ministries of Health, the Family and Integration, National Education and Vocational Training, and Equal Opportunity, with the participation of civil society organizations such as Planning Familial, provides for the implementation of an action plan on relationships and sexual health for the period 2013–2016 and the establishment of a committee to monitor its implementation. The programme was finalized in June 2013.

121. Its goals include:

1. The promotion of sexual health for every child, adolescent, woman, man and couple so that all, men and women, might live their sexuality in a responsible and joyful manner that is respectful of themselves and others;
2. The adoption of a healthy sexual lifestyle and improved access to reliable and high quality contraception;
3. A reduction in the number of unwanted pregnancies;
4. A reduction in the number of abortions;
5. The prevention of sexual violence and ill-treatment.

122. On 17 July 2013, the ministries of the Family and Integration, Health, National Education and Vocational Training, and Equal Opportunity committed themselves in solidarity and partnership, according to and within the boundaries of their respective remits, by signing a declaration of intent, to support and promote wholeheartedly a common policy

on relationships and sexual health with an intersectoral and multidisciplinary approach. The national programme on relationships and sexual health contains guidelines based on fundamental principles and the national action plan mentioned above.<sup>20</sup>

#### 4. “Exercise of basic rights” policy area

123. Bill No. 6172A on the reform of the Civil Code<sup>21</sup> brings together three initially separate bills. Bill No. 5914 amends the lawful minimum age for marriage and corresponding provisions, lifts the mandatory interval before widows may remarry and fills gaps in some of the Code’s provisions. Bill No. 6172 introduces reforms regarding marriage and adoption, while bill No. 5908 contains measures to combat marriages and partnerships that are forced or of convenience and amends provisions of the Civil Code, the New Code of Civil Procedure and the Criminal Code. The combined bill is now before the Parliamentary Commission.

124. The Ministry of Equal Opportunity has financed the production of a brochure entitled “NO to female genital mutilation” by one of its accredited authorities, the National Council of Women of Luxembourg, in conjunction with the non-profit organization Initiativ Liewensufank and the Ministry of Health. This informative brochure is designed to raise the general public’s understanding of female genital mutilation, its serious consequences, the relevant national and international legislation, the penalties currently in place in Luxembourg and the legislative amendments needed in order to combat the phenomenon in a more targeted and effective manner.

125. Article 2 of the amended Act of 16 December 2008 on Support for Children and the Family states that, “in families and school communities in particular, physical and sexual violence, intergenerational transgressions, inhuman or degrading treatment, and genital mutilation are prohibited”.

**(b) In addition, please provide detailed information on the steps taken to ensure the systematic collection and publication of data, disaggregated by type of violence and by the relationship of the perpetrator to the victim. Please indicate how the State party has used such data as the basis for monitoring the implementation of current and future general policy and support measures.**

126. It is via the Committee on Cooperation between Professionals Combating Violence, established under the amended Domestic Violence Act of 8 September 2003 (see the response to paragraph 18 (a) of the list of issues above), headed by the Ministry of Equal Opportunity and counting among its members the Ministry of Justice, the Grand-Ducal police, the public prosecution service, accredited support services for victims of domestic violence and, since 1 September 2013, similar services for its perpetrators, that the State collects, studies and publishes statistics annually. They are disaggregated by the gender, age, nationality, social background and professional group of the victims and the perpetrators, and take into account the relationship between the victim and the perpetrator, household composition and the time and place that the acts of violence were committed. They also contain details, in each category, on whether the victims and the perpetrators live together, the number of complaints filed and allegations made, evictions and other actions taken by the police and social services, and prosecutions and convictions for a range of offences provided for by the Criminal Code solely in the area of domestic violence.

<sup>20</sup> The national action plan, guidelines and declaration of intent may be consulted at [http://www.mfi.public.lu/actualites/2013/07/22\\_sante\\_sexuelle/index.html](http://www.mfi.public.lu/actualites/2013/07/22_sante_sexuelle/index.html).

<sup>21</sup> Available on the Chamber of Deputies website: [www.chd.lu](http://www.chd.lu).



127. The statistics are provided by the Offices of the Public Prosecutor of Luxembourg and Diekirch, the Grand-Ducal Police, the Support Service for Victims of Domestic Violence (SAVDD) and, since 1 September 2013, the Riicht Eraus support service for perpetrators.

128. The Grand-Ducal Regulation of 24 November 2003<sup>22</sup> on the Committee on Cooperation between Professionals Combating Violence sets forth the Committee's membership, organization and role. Work is being done to amend the Regulation in order to bring it into line with the Act of 30 July 2013 amending the Domestic Violence Act.

129. The Committee also has the task of monitoring and assessing implementation of the above-mentioned Act, looking at potential problems with its practical application, and of studying the issue of domestic violence in general and submitting to the Government any recommendations and proposals that it considers useful.

130. The Committee plays a key role in assessing the extent and seriousness of domestic violence and other kinds of related violence.

131. It is helping to achieve a clearer understanding of and greater grip on the problem and to create improved and more targeted government policy.

132. The Committee drafts and submits to the Government an annual report on its activities, bringing together data, the results of evaluations of its activities and analyses that may contain proposals it considers pertinent. The reports may be consulted at [www.mega.public.lu/publications](http://www.mega.public.lu/publications).

133. The Committee's statistics indicate that, since 2004, there has been a steady increase in the number of police responses and evictions. Of particular interest, other statistics indicate that incidents often involve non-nationals (on average, non-nationals resident in Luxembourg account for 50 per cent) and certain age groups more than others, and are prevalent in specific parts of the country and at certain times of the week, and even of the year. It was at the Committee's urging that the Ministry of Equal Opportunity decided to launch a scientific study because of the need to go beyond mere observations and concise analyses in order to understand and address the root causes of domestic violence in the specific context of Luxembourg, taking into account public health issues and reviewing the effectiveness and accessibility of current policy on combating and preventing the phenomenon. It commissioned an external expert body, CRP Santé (Public Research Centre on Health), to conduct a study on the causes of domestic violence in Luxembourg towards the development of focused prevention efforts in 2013–2014. As well as providing a concrete analysis of the nature and extent of domestic violence, it is expected that the study will submit recommendations on the dissemination of information, awareness-raising and prevention.

134. In 2004, the Government commissioned an external forward assessment of the Domestic Violence Act for the years 2004–2006, followed by a second internal assessment of the Act in the light of implementation of the above-mentioned national action plan on gender equality, and a final assessment of its implementation over the five last years, between 2004 and 2009, as noted above in response to paragraph 18 (a) of the list of issues.<sup>23</sup>

135. These studies and the Committee's work and recommendations made it possible to launch a far-reaching reform of the Act, including an assessment of resource requirements, guidelines, and measures to prevent, combat and eliminate domestic violence (see the

<sup>22</sup> <http://www.legilux.public.lu/leg/a/archives/2003/0173/a173.pdf>.

<sup>23</sup> The assessment, entitled "Fünf Jahre Gewaltschutzgesetz im Großherzogtum Luxemburg", may be consulted at [www.mega.public.lu/publications](http://www.mega.public.lu/publications).

response to paragraph 18 (a) of the list of issues), which culminated in the passing of the Act of 30 July 2013.

136. Leveraging the approved services of the support associations accredited by the Ministry of Equal Opportunity for adult and child victims (SAVVD and the Psychological Support Service for Child and Adolescent Victims of Domestic Violence (S-PSYea)) and Riicht Eraus for perpetrators of domestic violence, which work specifically to support and empower women (with or without children) and girls in difficulties, or to support or to encourage a change of behaviour in men (with or without children) and boys who are in difficulties or experiencing self-doubt including because of domestic violence, the Government monitors and analyses activities, needs and practical problems associated with domestic violence and the statistics collected by those services. It does this in the framework of regular joint platforms and systematic data collection regarding the numbers of people using the services and their reasons for doing so.

137. S-PSYea, run by the non-profit organization Femmes en détresse (Women in Difficulties, [www.fed.lu](http://www.fed.lu)), was established in 2005. The service is open to anyone aged from 3 to 18 years who is a victim, directly or indirectly, of domestic violence. It is attached to SAVVD, which was set up in 2003 under the Domestic Violence Act. SAVVD supports women and men who are victims and have been helped by eviction orders imposed on offenders under the Act. Under the forthcoming amendments to the Act, these support services will be enabled by law to assist child victims of domestic violence.

138. On 19 November 2012, the Ministry of Equal Opportunity launched infoMann, its first support service for men and boys. It is run by the non-profit organization ActTogether. The service provides support, guidance and assistance to men, boys and the people around them who find themselves in difficulties or experiencing self-doubt (see their website [www.acttogether.lu](http://www.acttogether.lu)).

139. Oxygène, an information and advice centre for girls run by Femmes en détresse, was set up in 2010. It is open to all young girls, teenage girls and young women in crisis or difficulty, who are victims of domestic violence or have been subjected to psychological, physical or sexual violence, and need someone to listen, or to provide advice, support and guidance. It runs workshops in primary schools and other educational institutions to raise awareness of and attempt to prevent violence and sexual abuse. It also provides a social service that monitors girls living in supervised accommodation, with a view to helping them to find their feet and working out a study plan for them.

140. The Ministry has created a website on violence ([www.violence.lu](http://www.violence.lu)), which is being updated in line with the new Act of 30 July 2013. As in the case of the megafamily.lu website, it provides two access points, depending on the user's needs. The website deals only with domestic violence. One point of access is for victims and the other for offenders wishing to mend their ways. Visitors can find advice and tips, legal information and the addresses of services that can, for instance, provide help, lend an ear, assist with accommodation or give guidance on, among other things, where to get counselling or psychological help. Since the Domestic Violence Act was passed, the Ministry has staged regular awareness-raising campaigns, training sessions and lectures on domestic violence. In 2011–2012, one such campaign, entitled “Violence Hurts the Whole Family”, conducted in three languages (French, German and Portuguese) and directed at men, women and children as victims and perpetrators, was held in the framework of the International Day for the Elimination of Violence against Women. The campaign videos showing two toys (a teddy bear and a duck, both crying) were designed to underline that children are always victims where violence takes place in the home, even if they are not the direct objects of that violence (see [www.violence.lu](http://www.violence.lu)).

141. In 2013, the Ministry of Equal Opportunity decided to make its public information campaigns more readily accessible and comprehensible by using the languages and culture of the main communities in the Grand Duchy as a vehicle. It set up a partnership with the Confederation of the Portuguese Community in Luxembourg in order to raise awareness in the Portuguese-speaking community (which, according to statistics from the Committee on Cooperation between Professionals Combating Violence, was the community most affected by eviction orders in 2011 and 2012) through three educational interactive theatre performances on the prevention of domestic violence. The idea is not to point the finger at any one given community, given that violence affects all nationalities and cultures represented in Luxembourg. This is just the first stage of an awareness-raising campaign that in coming years will be aimed as much at Luxembourg nationals as other communities in the country.

142. A quarterly newsletter (*Mega Newsletter*, <http://www.mega.public.lu/functions/newsletter/index.php>) on the policy and initiatives of the Ministry of Equal Opportunity regarding equality in education, among youth, at work and in society, including the topic of domestic violence, has been published since 2011.

143. With a view not only to preventing and combating violence but also to achieving real equality between men and women, the Ministry of Equal Opportunity has made it a priority to campaign for a change in attitudes. Such awareness-raising initiatives have started by targeting stereotyped gender roles and their impact on private and professional life.

144. Since 2009, information campaigns have been directed particularly at young people. The Ministry actively promotes exchanges with pupils through targeted activities in schools and student fairs and through creative competitions. A website on the issue has also been set up ([www.echsimega.lu](http://www.echsimega.lu)).

**(c) Please provide statistical data on the number of complaints of violence against women and any investigations, charges brought and convictions, as well as on any decisions concerning redress and compensation for victims.**

145. Luxembourg underlines that its laws on violence are gender-neutral and cover both women and men.<sup>24</sup>

146. Detailed statistics on domestic violence disaggregated by sex have been made available to the public at [www.mega.public.lu/publications](http://www.mega.public.lu/publications) in the annual reports of the Committee on Cooperation between Professionals Combating Violence since the Domestic Violence Act was passed on 8 September 2003.

147. The annual police report is also available at [http://www.police.public.lu/actualites/statistique/rapport\\_stat\\_2012/index.html](http://www.police.public.lu/actualites/statistique/rapport_stat_2012/index.html).

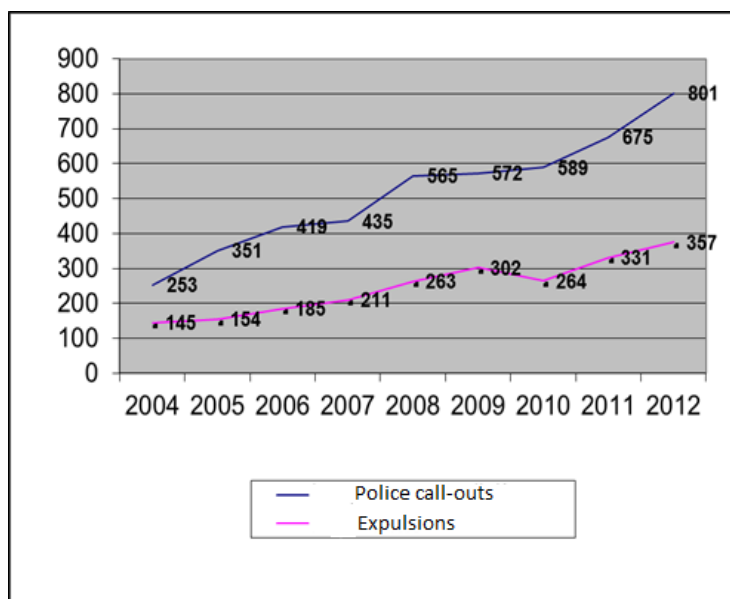
148. Under the amended Domestic Violence Act, the public prosecution service has been given new and sensitive powers: only a public prosecutor in possession of a police visit report may order the eviction from the home for a period of 14 days of a person who has acted violently towards or is planning to commit an offence against another person also living in the home.

<sup>24</sup> Policy on basic rights with regard to equality between men and women cannot focus on violence against women alone but must rather address the problem of gender-based violence against women, children and men. Gender-based violence is a serious and complex problem that, as a rule, affects women and children first and foremost. Nonetheless, men are also affected. While women victims must be helped, supported and empowered, male offenders should also be encouraged and supported to accept their responsibilities. The reverse should also apply where the victims are men. The Government thus uses neutral language.

149. These especially thorny decisions generally have to be taken by the duty public prosecutor during the night, given that such incidents usually occur at night.

150. In the course of the 2011/12 judicial year, 311 requests for eviction were granted and 359 turned down. It is worth noting that this was the third year in which the number of requests turned down exceeded those authorized, and this year quite significantly, as the number rejected represented almost two thirds, or 63.758 per cent, of the increase in the number of police call-outs.

151. Since the Act came into force the situation has developed as set out below:



Source: Grand-Ducal police.<sup>25</sup>

152. The following figures concern individuals who have received more than one eviction notice since the Domestic Violence Act came into force:

- 195 persons have been evicted twice since November 2003, and 21 of them twice in 2012;
- 40 persons have been evicted three times since November 2003, and 2 of them three times in 2012;
- 9 persons have been evicted four times since November 2003;
- 5 persons have been evicted five times since November 2003.

153. A total of 695 requests were submitted to the public prosecution service in 2012, 135 more than in 2011 and equivalent to almost two a day.

154. The overall picture, with no less than 2,212 evictions between 1 November 2003 and 31 December 2013, is troubling and the increase in the number of repeat offenders is equally worrying. It should not be forgotten that the real figures are probably higher, given the number of cases about which the authorities doubtless remain in the dark. Many victims,

<sup>25</sup> From the 2012 report to the Government by the Committee on Cooperation between Professionals Combating Violence. The reports for 2010, 2011 and 2012 are attached to the present document (annexes 11, 12 and 13).

for very human and understandable reasons, are reluctant to call the police when domestic violence occurs.

155. Attached to this document<sup>26</sup> are four complete statistical tables on the decisions taken by the Luxembourg district public prosecutors to grant or turn down eviction requests in cases of domestic violence in 2012.

**19. With respect to human trafficking:**

(a) Please provide detailed information on the prevalence of trafficking into and out of Luxembourg as well as information on the impact of measures taken and results achieved. In addition, please describe the steps taken to strengthen existing measures to combat human trafficking in such a way as to make it possible, on the one hand, to conduct more effective checks when artistes' visas are issued and to ensure that they are not used for unlawful purposes and, on the other, to protect the witnesses and victims of such acts.

**The prevalence of trafficking**

156. Luxembourg is a destination country for women mostly from Eastern Europe and Nigeria.

<i>Human trafficking cases</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Sexual exploitation	5	7	3	6	6	1
Labour exploitation	0	0	0	1	0	0
Slavery-like practices	0	0	0	0	2	0

**Measures taken**

157. The Act of 29 August 2008 on the Free Movement of Persons and Immigration, which entered into force on 1 October 2008, has equipped Luxembourg with a new legislative framework regulating legal immigration. It abolishes the previous amended Act of 1972 on the Entry and Stay of Foreign Nationals. As part of the implementation of the new Act, the Government has created an interministerial study group to draft guidelines and recommendations for a proactive and consistent immigration policy taking into account the needs of Luxembourg's economy and the current and projected labour market situation.

158. It is important to note that, following a decision taken on 16 April 2004 by the Government Council, Luxembourg stopped granting nationals of non-member States of the European Union permission to enter Luxembourg to work as cabaret artistes or in similar activities from 1 May 2004.

159. Article 34 of the Act on the Free Movement of Persons and Immigration regulates the entry and stay for periods of less than three months of third-country nationals. In order to enter and remain in Luxembourg, the person concerned must explain the reason and circumstances of the planned stay and provide evidence that he or she has legal access to sufficient resources for the duration of the stay. Permission must be sought to engage in paid employment or independent professional work. A waiver may be granted to persons intermittently employed in the entertainment industry.

<sup>26</sup> Annexes 14, 15, 16 and 17.

160. When the police have evidence that a third-country national has been the victim of a human trafficking offence, they notify the immigration authorities and inform the alleged victim of the option of being granted time to consider the situation and a residence permit should he or she decide to cooperate with the authorities in their inquiries or prosecution regarding such offences. The alleged victim is put in touch with a support service for victims of trafficking. The immigration services grant such persons a period of 90 days to extricate themselves from the grip of the offenders, get themselves settled and make an informed choice as to whether to press charges or make a statement regarding the persons or rings allegedly guilty of trafficking offences.

161. Two important acts on human trafficking have been passed:

(a) *Human Trafficking Act of 13 March 2009*

162. The Act has the purpose of adopting:

- The Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, opened for signature in Palermo from 12 to 15 December 2000. Note that the Convention itself was adopted by an act passed on 18 December 2007;
- The European Union's Council Framework Decision of 19 July 2002 on combating trafficking in human beings;
- The Council of Europe Convention on Action against Trafficking in Human Beings.

(b) *Act of 8 May 2009 on Supporting, Protecting and Ensuring the Safety of Victims of Trafficking*<sup>27</sup>

163. The principal purpose of the Act is to put the work of supporting, protecting and ensuring the safety of victims of human trafficking, especially unaccompanied minors, on a solid legal footing, thereby helping with their physical, psychological and social recovery.

164. To that end, anyone identified as a victim of trafficking is, under the Act, entitled to:

- Accommodation, social and education support, material and financial aid, and medical and psychological care and therapy according to their needs;
- Language assistance;
- Legal aid within the limits defined by the appropriate legislation.

165. The Act regulates the activities and help offered by support services whose task it is to assist and guide trafficking victims in coordination with the police and provides for the creation of a monitoring committee on combating human trafficking, which, in particular, has the task of monitoring and coordinating efforts to prevent trafficking and assess the extent of the problem.

166. Partnerships with and between associations accredited by the Ministry of Equal Opportunity and the Ministry of the Family and Integration provide both residential and non-residential services for the recovery, support, empowerment and integration of all victims of trafficking, tailored to their specific needs, taking into account their origin, religion, nationality, disability, home country, status and other factors and regardless of the motives for which they were trafficked.

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<sup>27</sup> <http://www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf>.

167. The ministries of Equal Opportunity and Family and Integration, together with the Criminal Investigation Branch of the police and trafficking victim support organizations, coordinate efforts to assist and protect victims.

168. Victims who are minors are entitled to go to school.

**(b) Please indicate whether the State party has taken new steps to combat human trafficking, in particular to adopt the anti-trafficking bill, to take all appropriate measures to ensure better identification and investigation of trafficking cases (including providing training courses to teach police officers to identify potential victims of trafficking), to prosecute persons committing and instigating them, and to further strengthen bilateral, regional and international cooperation with the countries of origin, transit and destination of trafficking victims.**

### **Legislation**

169. Aside from the legislation mentioned in the response to paragraph 19 (a) of the list of issues, Luxembourg has also adopted, by means of an act passed on 21 July 2012, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, which was signed in New York on 15 November 2000.

170. Bill No. 6562 was tabled on 11 April 2013 with the purpose of incorporating into domestic legislation Directive 2011/36/EU of the European Parliament and of the Council of the European Union of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JAI.

171. The bill aims to transpose Directive 2011/36/EU into the legislation of Luxembourg. It should be noted first of all that domestic law already largely complies with the provisions of the Directive, which itself draws heavily on those contained in the Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

172. The country's international obligations are thus already largely covered by its current legislation.

173. The bill also takes into consideration the initial conclusions submitted by a monitoring team of the Group of Experts on Action against Trafficking in Human Beings (GRETA) after its country visit in December 2012. The GRETA report was not yet available when the initial draft of the bill was finalized in February 2013.

174. Under the bill, the Ombudsman shall be appointed as National Rapporteur on Human Trafficking.

175. Article 3 of the Act of 8 May 2009 states that an unaccompanied underage victim of human trafficking arriving from a member State of the European Union or a third country, and for whom there is no adult responsible for his or her safety and protection, is to be placed in the care of a guardian as long as that situation persists or until such time as he or she can be placed in the care of a body in the country of origin authorized to act in his or her best interests. That article is amended by bill No. 6562, which strengthens the rights of trafficking victims by adding the following text on the reasons for assigning guardians to unaccompanied minors who are victims: "... or if under the law a conflict of interests concerning the underage victim prevents those with parental authority from defending the best interests of the child."

176. It should also be noted that two draft Grand-Ducal Regulations were adopted by the Government Council on 18 October 2013 and forwarded for comment to the Council of

State and the Advisory Commission on Human Rights. The first deals with the composition, organization and workings of the monitoring committee on combating human trafficking. The second amends the Grand-Ducal Regulation of 19 March 1999 on government accreditation for support services for girls, women and women with children, implements article 2, paragraphs 1 (a), 2 and 4, and article 10 of the Act of 8 May 2009 and amends the New Code of Civil Procedure.

### **Procedures**

177. Multidisciplinary cooperation procedures have been put in place regarding the way in which victims of human trafficking are helped and supported from the moment they are identified, as have procedures for granting them the status of victim. Cooperation is needed between a range of stakeholders, including the police, support services, the Immigration Directorate of the Ministry of Foreign Affairs, public prosecutors, the Ministry of Equal Opportunity, the Ministry of Justice and the Luxembourg Reception and Integration Agency, to bring into effect the status of protected victim of human trafficking.

178. Achievement of that goal will require:

- A description of the planned procedure;
- A reminder to stakeholders of their legal obligations;
- Clarification of the role to be played by each stakeholder;
- Adjustments in the internal organization of the police force;
- Increased awareness on the part of front-line stakeholders of the specific measures that need to be taken in the case of unaccompanied foreign minors and of the importance of being sensitive to the vulnerability of minors.

179. Members of the special police unit for preventing and combating human trafficking attend a course given by a senior officer of the Criminal Investigation Branch.

180. The course deals with the legal context, operational matters, action to be taken by the police, and the identification and treatment of victims (including their reception and the provision of information and support).

181. Regular in-service training is provided for police officers. Detectives of the Criminal Investigation Branch have attended numerous courses and seminars on the subject in the past. Fresh training courses will take place in 2014.

182. The police participate in Europol's Analysis Work File (Phoenix) database by collecting and analysing data on human trafficking. Aside from the usual channels of police cooperation (such as the International Criminal Police Organization (Interpol), the Benelux Treaty, and the Prüm Convention), member States of the European Union are increasingly trying to organize joint investigations.

183. Training is also provided to staff of support services and other persons working directly with victims.

## **III. Other issues**

20. **Please describe what measures have been taken, if any, to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since the adoption of the Committee's previous concluding observations.**

184. The Optional Protocol was ratified under an act passed on 11 April 2010.



21. The Committee notes that it has not received a response from the State party to the request it made in paragraph 17 of its previous concluding observations. A reminder was sent by the Rapporteur for follow-up to concluding observations in a letter dated 17 November 2008. Please provide the information requested.

**Concluding observation 8:**

While noting that the Charter of Ethical Values of the Grand-Ducal Police stipulates in appendix 4 that “(a police officer) shall have absolute respect for persons, without discrimination of any kind”, the Committee is concerned about reports that foreign detainees are subjected to arbitrary behaviour and racist or xenophobic insults by law enforcement and prison personnel (arts. 11 and 16).

The State party should take the necessary steps to:

- (a) Provide law enforcement and prison personnel with more training in respect for the physical and psychological integrity of detainees, regardless of their origin, religion or sex;
- (b) Make such behaviour a criminal offence;
- (c) Order systematic investigations and, in all confirmed cases, bring the accused before the competent courts.

185. Subparagraph (a): See the answers to paragraphs 7 and 8 of the list of issues.

186. Subparagraph (b): The offences referred to are criminalized in national law under articles 454 to 457-4 of the Criminal Code.

187. Subparagraph (c): Where offences do occur, investigations are ordered and offenders are brought before the competent courts.

**Concluding observation 9:**

While taking note of the explanations provided by the delegation of Luxembourg regarding solitary confinement, the Committee regrets the persistence of this disciplinary practice and Luxembourg’s intention to maintain it despite the earlier recommendations of the Committee against Torture (CAT/C/CR/28/2, paras. 5 and 6) and those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (arts. 11 and 16).

The Committee urgently reiterates its recommendation that solitary confinement be strictly and specifically regulated by law and that judicial supervision be strengthened. The State party should take the necessary steps to put an end to this disciplinary practice and change the relevant regulations accordingly.

188. See the answer to paragraph 11 of the list of issues.

**Concluding observation 10:**

The Committee takes note of the information provided by the State party in its written replies, according to which negotiations have been held between the Ministry of the Family, the Ministry of Public Works and the municipality of Wormeldange with a view to reaching an agreement on completion of the project to build the Dreiborn closed security unit for minors. It also notes that, at the time of consideration of this report, the municipal council had yet to issue a construction permit. However, the Committee continues to be concerned about the placement of minors in the Luxembourg Prison, which cannot be regarded as a suitable environment for them, especially as it cannot be guaranteed that there will be no contact whatsoever between minors and adult detainees. The Committee is also concerned that minors in conflict with the law and those with social or behavioural

problems are placed in the same facilities and that minors aged between 16 and 18 may be brought before ordinary courts and tried as adults for particularly serious offences (arts. 11 and 16).

The Committee urgently reiterates its previous recommendation that minors should not be placed in adult prisons for disciplinary purposes (CAT/C/CR/28/2, paras. 5 and 6). The State party should also take the necessary steps to build the Dreiborn security unit as soon as possible and, in the interim, to ensure that minors are kept strictly separate from adult detainees.

The State party should also keep children in conflict with the law separate from minors with social or behavioural problems, do everything possible to ensure that minors are never tried as adults, and set up an independent monitoring body to inspect juvenile facilities regularly (CRC/C/15/Add.250, para. 61 (c), (d) and (e)).

189. See the answer to paragraph 17 of the list of issues.

**Concluding observation 11:**

The Committee is concerned about the system which gives the public prosecutor discretion to decide not to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even to order an investigation, in blatant violation of the provisions of article 12 of the Convention (art. 12).

In order to respect the letter and spirit of the provisions of article 12 of the Convention, the State party should consider departing from the system which gives the public prosecutor discretion to decide whether to prosecute so that there can be no doubt as to the obligation for the competent authorities to launch impartial investigations immediately and systematically in all cases in which there are reasonable grounds for believing that an act of torture has been committed anywhere in the territory under its jurisdiction.

190. See the answer to paragraph 13 of the list of issues.

22. **Please provide information on the legislative, administrative and other measures taken by the State party in response to the threat of acts of terrorism and indicate whether these measures have affected human rights safeguards, in law and in practice, and, if so, in what way; and how the State party has ensured that the measures taken to combat terrorism were in keeping with all its obligations under international law. Please describe the training provided in this respect to law enforcement officers, indicate the number and types of convictions handed down under such legislation, the legal remedies available to persons affected by anti-terrorist measures, and state whether complaints have been lodged for non-observance of international standards, and the outcome of such complaints.**

191. The acts listed below have had no adverse impact on human rights safeguards:

- The Act of 26 December 2012 approving the Council of Europe Convention on the Prevention of Terrorism, signed in Warsaw on 16 May 2005, which amended:
  - The Criminal Code;
  - The Code of Criminal Procedure;
  - The amended Act of 31 January 1948 regulating air traffic;
- The amended Act of 11 April 1985 approving the Convention on the Physical Protection of Nuclear Material, opened for signature in Vienna and New York on 3 March 1980; and

- The amended Act of 14 April 1992 establishing a disciplinary and criminal code for the Navy.
- The Act of 27 October 2010 on Strengthening the Legal Framework for Combating Money-laundering and the Financing of Terrorism (...).

Goal: To amend legislation related to money-laundering and the financing of terrorism and thereby take into account criticisms made by the Financial Action Task Force (FATF) in its mutual evaluation report on Luxembourg.

- The Act of 17 July 2008 on Combating Money-laundering and the Financing of Terrorism, which amends:
  - Article 506-1 of the Criminal Code;
  - The Act of 14 June 2001 on:
    1. Approving the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990;
    2. Amending provisions of the Criminal Code;
    3. Amending the Act of 17 March 1992:
  - Regarding the approval of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988;
  - Amending and supplementing the Act of 19 February 1973 on the Sale of Medicinal Substances and Combating Drug Addiction;
  - Amending and supplementing provisions of the Code of Criminal Investigation.

The purpose of the Act is to bring the criminal offence of money-laundering into line with, in particular, the requirements of the Council Framework Decision of 26 June 2001 and the third Directive on money-laundering.

- The Act of 29 July 2008 approving the International Convention for the Suppression of Acts of Nuclear Terrorism, opened for signature in New York on 14 September 2005.

The purpose of the Act is to approve the Convention.

- The Act of 17 July 2008 on:
  - The incorporation into domestic law of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money-laundering and terrorist financing;
  - The incorporation into domestic law of Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and amending:
    1. The amended Act of 12 November 2004 on Combating Money-laundering and the Financing of Terrorism;

2. The amended Judiciary Act of 7 March 1980;
3. The amended Financial Sector Act of 5 April 1993;
4. The amended Insurance Act of 6 December 1991;
5. The amended Solicitors Act of 9 December 1976;
6. The amended Legal Profession Act of 10 August 1991;
7. The amended Business Auditing Act of 28 June 1984;
8. The amended Accounting Act of 10 June 1999;

The Act incorporates into domestic law the provisions on reporting obligations of the third Directive on laundering.

192. Basic police training includes a two-hour course on terrorism and, more particularly, its various types (Islamic, extreme right, extreme left and all other forms of terrorism, such as that of separatists or linked to a specific cause). It also deals with different terrorist groups likely to be active in Luxembourg and factors to be borne in mind by police on the front line when assessing potential threats.

193. Moreover, police officers assigned to airport immigration control attend a one-hour course as part of training under the Common Core Curriculum of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

#### **IV. General information on the national human rights situation, in particular new measures and recent developments concerning implementation of the Convention**

**23. Please provide details on relevant recent developments which have occurred since the previous periodic report concerning the legal and institutional framework within which human rights are promoted and protected at the national level, including court judgements, if any.**

194. The following developments have occurred since the previous periodic report:

- The Act of 18 December 2007 approving the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in New York on 15 November 2000.

The purpose of the Act is to approve the Convention.

- The Act of 21 November 2008 on the establishment of an Advisory Commission on Human Rights in Luxembourg.

The purpose of the Act is to give the Advisory Commission legal status.

- The Act of 5 June 2009 amending:
  1. Article 37-1 of the amended Act of 10 August 1991 on the Legal Profession;
  2. Book I, Title X, Chapter 1 of the Civil Code;
  3. Article 1046 of the New Code of Civil Procedure.

The purpose of this Act is to ensure that minors involved in legal proceedings have an independent right to free legal assistance, regardless of any consideration of the resources of their parents, and an effective right to be heard in any proceedings involving them, and

to ensure that an ad hoc administrator is designated for minors where there is a conflict of interests between them and their legal representatives.

- The Anti-Human Trafficking Act of 13 March 2009, which:
  1. Approves:
    - (a) The Council of Europe Convention on Action against Trafficking in Human Beings, signed in Warsaw on 16 May 2005; and
    - (b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature in Palermo from 12 to 15 December 2000.
  2. Amends the Criminal Code; and
  3. Amends the Code of Criminal Investigation;

Essentially, the purpose of the Act is to insert a new chapter on human trafficking under Title VII of Book II of the Criminal Code, in order to provide an up-to-date and specific definition of the offence of human trafficking, specify aggravating circumstances and increase the corresponding penalties.

- The Act of 16 June 2010 approving the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, of 19 October 1996.

The purpose of the Act is to approve the Hague Convention.

- The Act of 3 August 2010 amending article 10 of the Act of 18 February 1885 on Cassation Appeals.

The purpose of the Act is to make cassation appeals more accessible.

- The Act of 11 April 2010:
  1. Approving the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in New York on 18 December 2002; and
  2. Amending the Act of 22 August 2003 establishing an ombudsman's office.

The purpose of the Act is to establish external supervision of places of detention and assign that new task to the Ombudsman's Office.

- The Act of 2 March 2010 approving Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature in Strasbourg on 27 May 2009.

The purpose of the Act is to implement immediately the procedural provisions of the Protocol.

- The Act of 13 February 2011 amending article 457-3 of the Criminal Code.

The purpose of the Act is to incorporate into domestic legislation the European Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (negationism) (L-07/10).

- The Act of 16 July 2011:
  1. Approving:
    - (a) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, opened for signature in Lanzarote on 25–26 October 2007;
    - (b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
    - (c) The Council Framework Decision 2004/68/JAI of 22 December 2003 on combating the sexual exploitation of children and child pornography.
  2. Amending articles of the Criminal Code and the Code of Criminal Investigation (L-07/09).

The purpose of the Act is to approve several international instruments and bring the definition of sexual exploitation offences into line with them.

- The Act of 28 July 2011 on:
  1. Approval of the Convention on the Rights of Persons with Disabilities, adopted in New York on 13 December 2006;
  2. Approval of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted in New York on 13 December 2006;
  3. Designation of independent mechanisms to promote, protect and monitor the implementation of the Convention on the Rights of Persons with Disabilities.
- The Act of 24 February 2012 on international recognition of previous convictions;
- The Act of 27 February 2012, bringing domestic legislation into line with provisions of the Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998 and subsequently approved by Luxembourg under the Act of 14 August 2000;
- The Act of 27 February 2012 regulating cooperation with the International Criminal Court;
- The Act of 21 July 2012, which:
  1. Approves the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, signed in New York on 15 November 2000;
  2. Amends the Criminal Code;
  3. Amends the Code of Criminal Investigation;
  4. Amends the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration.
- The Act of 12 December 2012 amending articles 351, 353 and 353-1 of the Criminal Code;
- Bill No. 5908, the purpose of which is to combat marriages and partnerships that are forced or of convenience and to amend and supplement provisions of the Civil Code, New Code of Civil Procedure and Criminal Code.

The purpose of the bill is to prevent and punish the practices of marriages and partnerships that are forced or of convenience.

- Bill No. 6172 on the reform of marriage and adoption law, amending:
  - (a) The Civil Code;
  - (b) The New Code of Civil Procedure;
  - (c) The Code of Criminal Procedure;
  - (d) The amended Act of 16 April 1979 establishing State civil service regulations;
  - (e) The amended Act of 24 December 1985 establishing local civil service regulations;
  - (f) The amended Act of 14 March 1988 on the establishment of adoption leave for private sector employees;
  - (g) The Citizenship Act of 23 October 2008.

The purpose of the bill is to allow same-sex marriage and reform adoption regulations.

- Bill No. 6381 on the reform of sentence enforcement.

The purpose of the bill is to reform procedures for enforcing sentences, in particular by establishing a sentence enforcement chamber competent to decide on how to apply sentences to detainees.

- Bill No. 6382 on prison administration reform.

The purpose of the bill is to set up a penitentiary service to administer sentences and manage the country's prisons.

- Bill No. 6408 on combating sexual abuse and sexual exploitation of children and amending provisions of the Criminal Code.

The purpose of the bill is to incorporate a Council framework decision into domestic law and amend the Criminal Code accordingly.

- The Draft Grand-Ducal Regulation on prison regimes and the revocation of the amended Grand-Ducal Regulation of 3 September 1974 on the composition and workings of the social protection service in prisons and reform schools.

The purpose of the bill is to reform prison regimes and the regulations governing conditions of detention in line with planned legislation contained in bills Nos. 6381 and 6382.

- Bill No. 6514, which:
  1. Approves the Council of Europe's Convention on Cybercrime, opened for signature in Budapest on 23 November 2001;
  2. Approves the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, opened for signature in Strasbourg on 28 January 2003;
  3. Amends the Criminal Code;
  4. Amends the Code of Criminal Procedure;
  5. Amends the Act of 18 April 2001 on Copyright, Associated Rights and Databases;
  6. Amends the amended Act of 30 May 2005 on the Protection of Privacy in the Area of Electronic Communications.

The purpose of the bill is to approve the Council of Europe's Convention on Cybercrime of 23 November 2001 and its Additional Protocol, and to update the relevant provisions of the Criminal Code and Code of Criminal Procedure with a focus on combating cybercrime.

- 24. Please provide detailed information on the new political, administrative and other measures taken in order to promote and protect human rights at the national level since the consideration of the previous periodic report, including human rights plans and programmes and the resources allocated to them, their means, objectives and results.**

195. See the answer to paragraph 23 of the list of issues.

- 25. Please provide information on the new measures and initiatives taken to ensure implementation of the Convention and follow-up of the Committee's recommendations since consideration of the previous report in 2007, including relevant statistics, as well as information on any new developments in the State party related in any way to the Convention.**

196. See the answer to paragraph 23 of the list of issues.

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